

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

DARRELL LADOW; MULENNIUM  
EQUIPMENT, INC.,

Plaintiffs,

v.

THE UNITED STATES OF  
AMERICA and its agency, THE  
DEPARTMENT OF ENERGY, and  
THE BONNEVILLE POWER  
ADMINISTRATION,

Defendants.

NO. CV-09-5020-RHW

**ORDER GRANTING PLAINTIFFS'  
MOTION FOR PARTIAL  
SUMMARY JUDGMENT;  
DENYING DEFENDANTS'  
CROSS-MOTION FOR SUMMARY  
JUDGMENT**

Before the Court are Plaintiffs' Motion for Summary Judgment (Ct. Rec. 11); Defendants' Cross-Motion for Summary Judgment (Ct. Rec. 22); Defendants' Motion to Continue Trial and Reopen Discovery (Ct. Rec. 28); and Plaintiffs' Motion to Strike Opinions of Experts (Ct. Rec. 31). A hearing on the motion was held on April 14, 2010, in Richland, Washington. Plaintiffs were represented by John Schultz. Defendants were represented by Frank Wilson.

This case involves a relatively small claim under the Federal Torts Claim Act. Plaintiff Darrell Ladow was involved in an accident in which it is undisputed that a vehicle driven by Joseph Yegge crossed into the opposing lane of traffic and struck the vehicle driven by Ladow. Mr. Ladow was driving a semi-truck owned by Plaintiff Mulennium Equipment. Mr. Yegge was an employee of Bonneville

**ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY  
JUDGMENT; DENYING DEFENDANTS' CROSS-MOTION FOR  
SUMMARY JUDGMENT ~ 1**

1 Power Administration.

2 Plaintiffs are seeking specific damages of \$11,686.30 in medical expenses,  
3 and \$28,590.38 in damages and down time to the semi-truck. Plaintiffs filed their  
4 complaint on March 16, 2009. A scheduling conference was held on September 8,  
5 2009, and a Scheduling Order was entered on September 21, 2009. The  
6 Scheduling Order set forth the deadline for identifying expert witnesses for January  
7 7, 2010. The discovery cutoff was set for March 23, 2010 and the dispositive  
8 motion deadline was set for March 30, 2010.

9 On October 21, 2009, in its Answer to the First Interrogatories Proposed to  
10 Defendants and specifically to Interrogatory No. 4, Defendants responded that  
11 “[t]he United States has no knowledge of the manner in which the accident  
12 occurred other than the information contained in the WSP report” and in response  
13 to Interrogatory No. 5, “[t]o the best of the United States’ information and belief,  
14 all statements of individuals that have any personal knowledge of the accident are  
15 part of the WSP report.”

16 Defendants responded to Interrogatory No. 6, in the following manner:

17 The WSP report, and the documents submitted to BPA by  
18 plaintiffs Darrell Ladow and Mulennium Equipment, Inc. are  
19 responsive to this request, and have already been produced. In  
20 addition, the United States has produced all documents from the  
21 Bonneville Power Administration, other than those covered by the  
22 Privacy Act or attorney-client privilege or work product, that have to  
23 do with the accident or with Mr. Yegge. Otherwise, BPA does not  
24 have any documents or records that reflect the allegations in the  
25 complaint or the accident itself, other than the photographs taken by  
26 BPA employees of the accident scene. To the best of the United  
27 States’ information and belief, the BPA photographs of the accident  
28 scene were taken by James Cramer, Regional Safety Manager for  
Walla Walla and Idaho Falls, and Tome Race, Safety and  
Occupational Health Manager on January 29, 2008. Mr. Cramer took  
photos of Mr. Yegge’s truck and utility box on January 30, 2008, at  
Anderson’s wrecking yard (where the truck was towed), and photos of  
a similar truck and utility box at the BPA Pasco office. All these  
photographs have been provided to plaintiffs in discovery.

Based on these responses, Plaintiffs filed a Motion for Summary Judgment,  
arguing that there were no triable issues of fact regarding whether Mr. Yegge was

**ORDER GRANTING PLAINTIFFS’ MOTION FOR PARTIAL SUMMARY  
JUDGMENT; DENYING DEFENDANTS’ CROSS-MOTION FOR  
SUMMARY JUDGMENT ~ 2**

1 negligent. Defendants filed a cross-motion and opposition to Plaintiffs' motion. In  
2 the motion, Defendants argued that uncontroverted medical evidence showed that  
3 Mr. Yegge died as a result of coronary cessation secondary to cardiac dysrhythmia.  
4 Put in layman's terms, Defendants maintain that Mr. Yegge died of natural causes,  
5 namely, a heart attack before the accident occurred.

6 Nothing about this contention is contained in the WSP report. To support  
7 this theory, Defendants seek to introduce two expert reports that were not  
8 identified in the WSP report and to reopen discovery to permit further investigation  
9 into the medical history of the deceased driver.

10 Based on the answers to the interrogatories given by Defendants, the natural  
11 conclusion was that there are no material questions of fact regarding whether Mr.  
12 Yegge was negligent. He was. His vehicle crossed over the centerline and  
13 violated traffic laws. He caused the accident. It was only when Defendants filed  
14 their response to the Motion for Summary Judgment that the issue of when Mr.  
15 Yegge died came to the surface.<sup>1</sup> To be fair, Plaintiff is not disputing that they  
16 received the coroner's report in discovery. Indeed, in his Statement of Facts

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18 <sup>1</sup>In order for Plaintiffs to recover from the United States, they have to show  
19 that Mr. Yegge, an employee of Bonneville Power Administration, was negligent.  
20 *See* 28 U.S.C. 1346(b), 2674. The Federal Tort Claims Act (FTCA) allows  
21 recovery against the United States for injuries caused by the negligent acts or  
22 omissions of federal employees who are acting in the scope of the employment.  
23 Negligence is determined "in accordance with the law of the place where the act or  
24 omission occurred." 28 U.S.C. § 1346(b).

25 Under Washington law, the operator of a motor vehicle who suffers an  
26 unforeseen loss of consciousness while driving, and is therefore unable to control  
27 the vehicle, is not liable for negligence. *Kaiser v. Suburban Transp. System*, 65  
28 Wash.2d, 461, 466 (1965).

1 Plaintiffs refer to the coroner's report that determine that Mr. Yegge was suffering  
2 from a heart attack. Nevertheless, Defendants never referred to the coroner's  
3 report in its answers to the Interrogatories. Instead, Defendants relied on the WSP  
4 report, and there is no mention in the report that Mr. Yegge suffered a heart attack  
5 prior to the accident.

#### 6 ANALYSIS

7 Summary judgment is appropriate if the "pleadings, depositions, answers to  
8 interrogatories, and admissions on file, together with the affidavits, if any, show  
9 that there is no genuine issue as to any material fact and that the moving party is  
10 entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). There is no  
11 genuine issue for trial unless there is sufficient evidence favoring the nonmoving  
12 party for a jury to return a verdict in that party's favor. *Anderson v. Liberty Lobby,*  
13 *Inc.*, 477 U.S. 242, 250 (1986). The moving party has the initial burden of  
14 showing the absence of a genuine issue of fact for trial. *Celotex Corp. v. Catrett*,  
15 477 U.S. 317, 325 (1986). If the moving party meets its initial burden, the non-  
16 moving party must go beyond the pleadings and "set forth specific facts showing  
17 that there is a genuine issue for trial." *Id.* at 325; *Anderson*, 477 U.S. at 248.

18 In addition to showing that there are no questions of material fact, the  
19 moving party must also show that it is entitled to judgment as a matter of law.  
20 *Smith v. University of Washington Law School*, 233 F.3d 1188, 1193 (9<sup>th</sup> Cir.  
21 2000). The moving party is entitled to judgment as a matter of law when the non-  
22 moving party fails to make a sufficient showing on an essential element of a claim  
23 on which the nonmoving party has the burden of proof. *Celotex*, 477 U.S. at 323.

24 When considering a motion for summary judgment, a court may neither  
25 weigh the evidence nor assess credibility; instead, "the evidence of the non-movant  
26 is to be believed, and all justifiable inferences are to be drawn in his favor."  
27 *Anderson*, 477 U.S. at 255.

1 Here, the question the Court must answer is whether it will consider  
2 Defendants' evidence, namely the coroner's report, in determining whether there  
3 are questions of material fact for the jury to resolve. If the Court does consider the  
4 coroner's report, it would conclude that there are triable issues of fact regarding  
5 when Mr. Yegge died. If it concludes that it should not consider the report, the  
6 jury would only hear evidence that Mr. Yegge crossed the centerline and caused  
7 the accident. There would be no credible evidence in the record to suggest that Mr.  
8 Yegge was unconscious prior to the accident. While a witness testified that he saw  
9 Mr. Yegge was bent over the wheel and not looking straight at the on-coming  
10 traffic, this testimony would not establish that Mr. Yegge was unconscious. It was  
11 just as likely that Mr. Yegge was reaching for his cell phone or some other item  
12 that had dropped. Without the coroner's report, any conclusion by the jury that  
13 Mr. Yegge became unconscious prior to the accident would be purely speculative.

14 The federal rules are to be interpreted and applied to arrive at inexpensive  
15 and efficient resolution of disputes. In cases such as this case, where the amount in  
16 controversy is less than the jurisdictional amount for diversity cases, the amount of  
17 time and discovery that can be expended in pursuing the claim is limited by  
18 economics. Accordingly, it was logical and efficient for Plaintiffs to move for  
19 summary judgement based on the record. In response to interrogatories that sought  
20 the identification of evidence and experts, the Defendant did not identify the facts  
21 and opinions upon which it now relies. To permit the reopening of discovery after  
22 the discovery cut off has passed and dispositive motions have been filed does not  
23 promote the efficient resolution of claims. In like manner, to permit the testimony  
24 of experts that were not mentioned in discovery responses does not promote  
25 efficient and inexpensive resolution of cases. To do so would require the Court to  
26 reopen discover and for the Plaintiff to hire experts that were not required before  
27 the dispositive motions were filed. As such, the Court should not consider the  
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1 expert reports, and will not reopen discovery.

2 The only defense to the motion is the argument that the driver was slumped  
3 over the wheel at the time of the accident and therefore must have been  
4 incapacitated. As discussed above, such a conclusion is speculative. The slumping  
5 could be from any cause, innocent or not. The vehicle violated the rules of the  
6 road and caused the accident. As such, Mr. Yegge and his employer are  
7 responsible. Plaintiffs' Motion for Partial Summary Judgment is granted, and the  
8 remaining issue for trial is the amount of damages that should be awarded to  
9 Plaintiffs.

10 Accordingly, **IT IS HEREBY ORDERED:**

11 1. Plaintiffs' Motion for Partial Summary Judgment (Ct. Rec. 11) is  
12 **GRANTED.**

13 2. Defendants' Cross Motion for Summary Judgment (Ct. Rec. 22) is  
14 **DENIED.**

15 3. Plaintiffs' Motion to Strike Opinions of Experts (Ct. Rec. 31) is  
16 **GRANTED.**

17 4. Defendants' Motion to Continue Trial and Reopen Discovery (Ct. Rec.  
18 28) is **DENIED.**

19 **IT IS SO ORDERED.** The District Court Executive is hereby directed to  
20 enter this order and to furnish copies to counsel.

21 **DATED** this 29<sup>th</sup> day of April, 2010.

22  
23 s/Robert H. Whaley  
24 ROBERT H. WHALEY  
United States District Judge

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**ORDER GRANTING PLAINTIFFS' MOTION FOR PARTIAL SUMMARY  
JUDGMENT; DENYING DEFENDANTS' CROSS-MOTION FOR  
SUMMARY JUDGMENT ~ 6**